

REMARKS

In the Final Rejection, Claims 34 – 35 were rejected under 35 U.S.C. §112, ¶2 as being indefinite because, as stated, the Examiner “is unclear how the invention is being carried out if there is more than one medium as claimed” and because “the claim does not provide support for the medium”.

Claims 34 – 35 were also rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter because, as stated, “[t]he body of the claim does not refer back to the preamble so the preamble is given no patentable weight, just intended use, and the claim only claims instructions”.

Except for a minor amendments to Claims 34 and 35 respectively limiting “without buffering” and “wire speed” to virtualization, Claims 34 and 35 are in substantially the same form as originally presented in this application and as having been before the Examiner and examined through three (3) different Office Actions on the merits. Not once through these previous examinations and in these Office Actions has the Examiner raised a rejection to these claims under either 35 U.S.C. §§ 112 or 101. It is only in this Final Office Action of 11/02/2007 that the Examiner has first interposed these rejections.

It is respectfully submitted that, without regard to the correctness of these rejections under Section 112 and Section 101 (which is not conceded), the language of Claims 34 – 35 which gave rise to the Examiner’s stated reasons for these two rejections has not changed since the claims were originally presented. Nothing done by Applicants in response to previous Office Actions gave rise to the alleged

indefiniteness or failure to comply with Section 101, and no amendments or actions taken by Applicants necessitated this final action. Accordingly, any such rejections should have been made, if at all, earlier during prosecution in a non-final Office Action where Applicants would have had a full and fair opportunity to address them. it is unfair and premature to cut off prosecution at this point by raising these rejections for the first time in a Final Rejection, and is clearly improper under M.P.E.P. §§ 706.07 – 706.07(a).

For the foregoing reasons, it is requested that the finality of the Office Action of 11/02/2007 be withdrawn.

Dated: November 8, 2007

Respectfully Submitted,

_____/Barry N. Young/____

Barry N. Young
Attorney for Assignee
Reg. No. 27,744

Customer No. 48789
Law Offices of Barry N. Young
Court House Plaza, Suite 410
260 Sheridan Avenue
Palo Alto, CA 94306-2047
Phone: (650) 326-2701
Fax: (650) 326-2799
byoung@young-iplaw.com